IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

MONDAY, THE 23RD JULY 2007 / 1ST SRAVANA 1929

RCRev..No. 234 of 2007

RCA.107/2003 of RENT CONTROL APPELLATE AUTHORITY, THALASSERY
RCP.185/2001 of RENT CONTROL COURT, KANNUR
.....

REVISION PETITIONER/APPELLANT/RESPONDENT:

THARAYIL PEEDIKAYIL NARIKUNDIL ABDUL KAREEM, S/O.MOIDEEN, AGED 71 YEARS, NO OCCUPATION, RESIDING AT SULAIKA MANZIL, NEAR PANCHAYATH OFFICE, VANKULATH VAYAL, KANNUR - 9, KANNUR TALUK.

BY ADV. SRI.JOBY JACOB PULICKEKUDY
SRI.ANIL GEORGE

RESPONDENT/RESPONDENT/PETITIONER:

THUTHIAN SOUDA, D/O.SHAREEFA, AGED ABOUT 50 YEARS, HOUSE WIFE, AZHIKODE AMSOM, DESOM, KANNUR TALUK, RESIDING AT CHELARY, MALAPPURAM DISTRICT.

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON 23/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

J.B.Koshy & K.P.Balachandran, JJ.

R.C.R.No. 234 of 2007

ORDER

Balachandran, J.

The tenant is the revision petitioner. The respondent filed R.C.P.No.185/01 before the Rent Control Court, Kannur for eviction of the petitioner/tenant under sections 11(3), 11(4)(ii) and 11(4)(v) of the Kerala building (Lease and Rent Control) Act, 1965 (hereinafter referred to as 'the Act'). The Rent Control Court allowed the petition under Sections 11(3) and 11(4)(v) of the Act, but, the claim for eviction under Section 11(4)(ii) of the Act was negatived. On appeal by the tenant before the Rent Control Appellate Authority, Thalassery, the appellate authority confirmed the order of eviction passed by the Rent Controller under Section 11(4)(v) of the Act, but, set aside the order of eviction passed under section 11(3) of the Act, allowing R.C.A.No.107/02 in part. Hence,

this revision.

2. The learned counsel for the petitioner/ tenant made strenuous attempts, taking us through the evidence in the case, to establish that there is no cessation of occupation without reasonable cause, as the scheduled building happened to be kept locked up for some time on account of the illness of the petitioner. It is also contended by him that Exhibit C1 commission report and Exhibit C2 plan, on which heavy reliance was placed by the authorities below to come to the conclusion that there is non user of the building for more than the requisite period of six months, were being acted upon without examining the Commissioner and that non examination of the Commissioner should have been found fatal in accepting the report to enter into findings in favour of the respondent/landlady. If at all the report of the Commissioner was being seriously objected to, the petitioner/tenant could have taken steps to examine the Commissioner to

disprove the report establishing his contentions. That having not been done, there is no merit in the contention that the Commissioner's report was accepted without examining the Commissioner.

3. Having heard the counsel for the petitioner at length, we are of the considered view that the authorities below have entered into findings, as regards cessation of occupation for more than the requisite period, based on evidence and that there is no irregularity, illegality or impropriety in the findings concurrently entered into by the authorities below in favour of the respondent/ landlady. There is, thus, no merit in this revision and this revision deserves only to the dismissed.

4. Finally, it is urged by the counsel for the petitioner that reasonable time be granted to the petitioner/tenant to surrender vacant possession of the scheduled building to the respondent/landlady. The request so made deserves to be considered favourably.

In the result, we dismiss this Rent Control Revision. At the same time, we grant the petitioner time of three months to surrender vacant possession of the scheduled building to the respondent/ landlady on the following conditions:

i. that he shall deposit the entire arrears of rent, if any, in the execution court with a detailed statement as to its correctness within three weeks from today.

ii. that he shall file an affidavit before the execution court within one month from today, reporting that all arrears of rent are cleared and unconditionally undertaking that he will surrender vacant possession of the scheduled building to the respondent/landlady positively on or before 23.10.2007 and that he will continue to pay the future monthly rents on the due dates itself till he actually surrenders vacant possession of the scheduled building to the respondent/landlady and

iii. that in case the petitioner fails to comply with the above conditions, he shall not be entitled to the benefit of continuing in occupation of the scheduled building till 23.10.2007 and shall be liable to be evicted immediately on the expiry of the aforesaid one month in execution of the order of eviction passed against him.

Registry shall communicate a copy of this order to the respondent/landlady at the expense of the petitioner, as we are disposing of this revision at the admission stage itself, without issuing notice to the respondent/landlady.

(J.B.Koshy, Judge)

23rd July, 2007

(K.P.Balachandran, Judge)

tkv